

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

ROSE COULTER-OWENS,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

TIME INC., a Delaware Corporation,

Defendant.

Case No. 2:12-cv-14390-GCS-MKM

Hon. George C. Steeh

**TIME'S MOTION TO ADJOURN HEARING
ON CROSS-MOTIONS FOR SUMMARY JUDGMENT
PENDING RULING ON MOTION TO STAY AND CERTIFY**

Defendant Time Inc. ("Time") hereby moves for an order adjourning the hearing on the parties' Cross-Motions for Summary Judgment, currently set for December 15, 2015, until after the Court rules on Time's Motion to Stay Case Pending the U.S. Supreme Court's Ruling in *Spokeo, Inc. v. Robbins* and Certify Questions to the Michigan Supreme Court (the "Motion to Stay and Certify") and in support thereof states as follows:

1. Time and Plaintiff each filed Motions for Summary Judgment on August 31, 2015. See Time's Mot. for Summ. J., ECF No. 119; see also Pl.'s Mot. for Summ. J., ECF No. 126 (together, the "Cross-Motions"). The parties completed briefing the

Cross-Motions on October 29, 2014.

2. On November 10, 2015, Time filed its Motion to Stay and Certify. Mot. to Stay and Certify, ECF No. 156. The Motion to Stay and Certify demonstrates that a stay of the case pending the Supreme Court's ruling in *Spokeo* is appropriate and that this Court should certify certain questions to the Michigan Supreme Court. *Id.* at 7-25, However, the Court's previously-scheduled hearing on the Cross-Motions is set for December 15, 2015, little more than a month away. *See* Notice of Mot. Hr'g, Sept. 3, 2015, ECF No. 132. The Court and the parties will need to begin preparing for the hearing shortly unless the hearing is adjourned or moved to a later date.

3. The Court's ruling on the Motion to Stay and Certify may obviate the need for a hearing on the Cross-Motions. Indeed, the outcome of a stay pending *Spokeo* or the certification of questions to the Michigan Supreme Court may be dispositive of the case. For example, if the Court grants the Motion to Stay and Certify and the Supreme Court's ruling in *Spokeo* holds that a bare statutory violation absent actual harm does not confer an injury-in-fact, the Court will lack subject matter jurisdiction over Plaintiff's claim and the class's claims. Br. in Supp. of Mot. to Stay and Certify at 9-14, ECF No. 156. In addition, if the Michigan Supreme Court agrees to answer Time's proposed certified questions, its ruling may be determinative of some of the dispositive legal issues presented by the Cross-Motions. *Id.* at 20-23. Accordingly, in order to

conserve judicial resources and maximize efficiency, this Court should adjourn the hearing until after it has considered and ruled upon the Cross-Motions.

4. The Court has the inherent power to control its own docket. *See Clinton v. Jones*, 520 U.S. 681, 706 (1997); *see also F.T.C. v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 626 (6th Cir. 2014). Adjourning the hearing on the Cross-Motions at this point in time will not cause any prejudice to the parties and will enable the Court to determine the threshold matter of whether to stay the case or certify questions to the Michigan Supreme Court *before* it has expended resources on the Cross-Motions.

5. Pursuant to Local Rule 7.1(a), counsel for Time conferred with counsel for Plaintiff and the class about this Motion via email on November 11, 2015. By and through counsel, Plaintiff and the class oppose the relief sought in the Motion.

WHEREFORE, Time respectfully requests that this Court grant its motion to adjourn the hearing on the Cross-Motions until the Court has had a chance to rule on the Motion to Stay and Certify.

Dated: November 11, 2015

/s/ Jeffrey Landis _____
Marc Zwillinger
Jeffrey Landis
Jacob Sommer
ZwillGen PLLC
1900 M St. NW, Ste. 250
Washington, DC 20036
(202) 706-5203

Robert M. Jackson (P40723)

Arthur T. O'Reilly (P70406)
HONIGMAN MILLER SCHWARTZ
AND COHN, LLP
660 Woodward Avenue
2290 First National Building
Detroit, MI 48226
(313) 465-7400
rjackson@honigman.com
aoreilly@honigman.com

Counsel for Defendant Time Inc

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

ROSE COULTER-OWENS,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

TIME INC., a Delaware Corporation,

Defendant.

Case No. 2:12-cv-14390-GCS-MKM

Hon. George C. Steeh

**TIME'S BRIEF IN SUPPORT OF ITS MOTION TO ADJOURN HEARING
ON CROSS MOTIONS FOR SUMMARY JUDGMENT
PENDING RULING ON MOTION TO STAY AND CERTIFY**

In accordance with Local Rule 7.1(d), Time submits this brief in support of its Motion to Adjourn Hearing on Cross-Motions for Summary Judgment Pending Ruling on Motion to Stay and Certify (“Motion to Adjourn”). Time incorporates by reference all of the arguments and authorities in the Motion to Adjourn as if fully set forth herein.

Dated: November 11, 2015

/s/ Jeffrey Landis
Marc Zwillinger
Jeffrey Landis
Jacob Sommer
ZwillGen PLLC
1900 M St. NW, Ste. 250
Washington, DC 20036
(202) 706-5203

Robert M. Jackson (P40723)
Arthur T. O'Reilly (P70406)
HONIGMAN MILLER SCHWARTZ
AND COHN, LLP
660 Woodward Avenue
2290 First National Building
Detroit, MI 48226
(313) 465-7400
rjackson@honigman.com
aoreilly@honigman.com

Counsel for Defendant Time Inc.

CERTIFICATE OF SERVICE

I certify that on November 11, 2015, I electronically filed the foregoing Motion to Adjourn Hearing on Cross-Motions for Summary Judgment Pending Ruling on Motion to Stay and Certify with the Clerk of the Court via the ECF system, which will send a notification of such filing to all counsel of record.

/s/ Jeffrey Landis
Jeffrey Landis